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JILL A. STERN
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July 28, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Requests for Pioneer's Preference
ET Docket No. 92-28; PP-29; PP-30;
PP-31; PP-32; PP-33

Dear Ms. Searcy:

On behalf of Ellipsat Corporation, I am transmitting here-
with an original and four copies of its "Petition for Public
Hearing" with respect to the above-referenced pioneer's prefer-
ence proceedings.

Should there be any questions concerning this matter, kindly
communicate with the undersigned.

Sincerely,

Jill Abeshouse Stern
Jill Abeshouse Stern

JAS:csg
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of:)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 92-28
Commission's Rules to Allocate)	
Spectrum to the Mobile-Satellite)	PP-29
Service above 1 GHz for)	PP-30
Low-Earth Orbit Satellites --)	PP-31
Requests for Pioneer's Preference)	PP-32
by Constellation, Ellipsat, Loral,)	PP-33
Motorola, and TRW.)	

To: The Commission

PETITION FOR PUBLIC HEARING

Ellipsat Corporation ("Ellipsat"), by its attorneys and pursuant to Commission Rule 1.1, hereby petitions the Commission to hold a public hearing, and take any other appropriate actions, to obtain information and clarify the circumstances relating to the award of a pioneer's preference in the above-referenced proceedings. This petition is precipitated by recent reports in the trade press, as detailed below, that a preference award to Motorola may be based on reasons other than those which are properly associated with pioneer status. These circumstances mandate a public hearing to reassure the public and the other LEO applicants that the preference requests are being given full and fair consideration, and to dispel the troublesome implication created by the trade press reports.

I.
THE CIRCUMSTANCES RAISE CONCERNS
ABOUT COMMISSION IMPARTIALITY

The July 20, 1992 issue of Satellite News reports that the FCC "likely will award a highly coveted Pioneer's Preference status to Motorola's controversial low-earth-orbit (LEO) Iridium satellite project." Satellite News also reports that "Sikes has become involved on a personal level -- courting the two additional votes he needs to push through the pioneer classification." According to Satellite News, Chairman Sikes is pursuing this course of action "over the objection of [FCC Chief Engineer] Dr. Tom Stanley and the FCC's Office of Engineering and Technology Assessment."^{1/}

Subsequently, the July 27, 1992 issue of Telecommunications Reports revealed that an "informal panel of experts" composed of expert satellite staff from NTIA, DOD and NASA have reviewed the big LEO applications. These unnamed experts have reportedly concluded that "none of the applicants' proposals were innovative enough to warrant a pioneer's preference." Telecommunications Reports also contains a denial by senior FCC staff members that Sikes is lobbying for Iridium.

As the Commission is aware, all of the big LEO applicants -- Ellipsat, Loral, TRW and Constellation -- have strongly opposed a

^{1/} Concerns about the Satellite News article prompted letters from TRW to all of the Commissioners on July 22, 1992. The TRW letters call upon the Commission to "clarify the matter publicly."

preference award to Motorola. The numerous (and voluminous) filings in this proceeding provide persuasive reasons to deny a preference award to Motorola.^{2/} The parties have questioned Motorola's entitlement to a preference on the grounds, among others, that Iridium is a technologically derivative system, not innovative within the meaning of the preference. Moreover, Iridium has been challenged as totally unrealistic from a market standpoint and therefore unlikely to be implemented.

In addition, the comments and oppositions in this preference proceeding document the adverse public interest impact that an award to Motorola could have, by predetermining the outcome of the licensing process and effectively denying consideration of the other LEO applications. The record provides abundant evidence that this is a unique case; the Iridium system cannot readily co-exist with the spread spectrum LEO systems. Concerns have been raised by all of the parties, except Motorola, that a preference award to Motorola could, because of the technical incompatibility of the systems, preclude licensing of diverse systems, contrary to long-standing Commission policies. The other applicants have repeatedly cautioned the Commission that an

^{2/} For reasons detailed in Ellipsat's previous submissions, if the Commission should award a preference, a strong case can be made for Ellipsat as the first to develop and file a concrete and innovative system proposal with the Commission. However, in order to expedite the big LEO proceedings, Ellipsat has suggested that the Commission should, at a minimum, delay consideration of a preference until the underlying technical and licensing issues are resolved.

award to Motorola would abrogate the Commission's statutory obligation to consider the fundamental policy and licensing issues from a public interest standpoint. For these compelling reasons, Ellipsat and the other LEO applicants have strongly urged the Commission not to allow the preference decision to pre-empt the critical public interest determinations that are required by law.

Given the lack of a factual justification for a preference award to Motorola and the unique public interest dangers of such an award, the rumors circulating in the trade press raise serious concerns. In order to dispel the implications created by the trade press, and in light of the adverse impact that a preference award to Motorola could have (including the potential "chilling effect" on the financial community), the Commission can and should take appropriate steps, as detailed below, to reassure the LEO applicants and the public that the Commission's deliberations are fair and impartial.

This reassurance is even more important following the denial on July 24, 1992, of TRW's request for stay of the pioneer's preference by the FCC's Chief Engineer.^{3/} The Chief Engineer there found, contrary to compelling evidence in the record, that tentative grant of a pioneer's preference would not cause irreparable injury.

^{3/} Order, ET Docket No. 92-28, released July 24, 1992.

II.
RECOMMENDED ACTION

The Commission has authority, pursuant to Commission Rule 1.1, to hold a public hearing upon the petition of any interested party or on its own motion. In this regard, Rule 1.1 authorizes the Commission to hold:

such proceedings at it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations.

The Commission should exercise its authority and hold a public hearing to elicit evidence and provide an opportunity for testimony on the pioneer's preference. A public hearing would allow for full and fair consideration of the issues, and reassure the public (and the applicants) that no improper or prejudicial actions have taken place. At the hearing, complete evidence relevant to the preference should be introduced, including testimony by the panel of experts that has apparently been convened and all of the applicants.^{4/}

^{4/} Ellipsat is particularly troubled by the secret nature of the panel of experts that was apparently convened by Chairman Sikes. In adopting the pioneer's preference, the Commission recognized that it might want to "seek the opinion of ... recognized experts." However, the Commission made clear that the product of the expert review process would be

Footnote continued on next page.

At a minimum, the Satellite News article underscores the need for careful, not hasty, consideration of the preference and its impact on the big LEO proceedings. Ellipsat has previously urged the Commission to delay a preference decision until a later stage in the proceedings, when the underlying policy and technical issues are resolved, in order to avoid the potential prejudicial impact on the applicants and the "chilling effect" on the financial community that could result. Only when the Commission determines the technical and service approach that best serves the public interest will it be able to answer the question of which system, if any, is entitled to a preference.

Footnote continued from previous page.


placed in the record of the pioneer's preference proceeding and subjected to public comment. Report and Order, Gen. Docket No. 90-217, 6 FCC Rcd 3488, 3494 (1991).

III.
CONCLUSION

For the foregoing reasons, the Commission should promptly initiate a public hearing and take any other actions necessary to ensure full and fair consideration of the pioneer preference requests in the big LEO proceedings, including delay of a preference award until the fundamental licensing and technical issues are resolved.

Respectfully submitted,

ELLIPSAT CORPORATION

By: 
Jill Abeshouse Stern, Esq.
Shaw Pittman Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8300

Its Attorney

July 28, 1992

CERTIFICATE OF SERVICE

I, Carla S. Gales, hereby certify that a copy of the foregoing document was served by first-class mail, postage prepaid, this 28th day of July, 1992 on the following persons:

*Chairman Alfred C. Sikes
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Sherrie P. Marshall
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*Cheryl Tritt
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

* Via Hand Delivery

*David R. Siddall, Chief
Frequency Allocation Branch
Office of Engineering and Technology
Federal Communications Commission
Room 7102
2025 M Street, N.W.
Washington, D.C. 20554

*Thomas P. Stanley
Chief Engineer
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

*Robert Ungar, Esq.
Federal Communications Commission
Room 7002-D
2025 M Street, N.W.
Washington, D.C. 20554

*Cecily C. Holiday, Esq.
Chief, Satellite Radio Branch
Federal Communications Commission
Room 6324
2025 M Street, N.W.
Washington, D.C. 20554

*Fern Jarmulnek, Esq.
Satellite Radio Branch
Federal Communications Commission
Room 6324
2025 M Street, N.W.
Washington, D.C. 20554

*Raymond LaForge
Federal Communications Commission
Room 7334
2025 M Street, N.W.
Washington, D.C. 20554

Lon Levin, Esq.
Vice President and Regulatory Counsel
AMSC
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

* Via Hand Delivery

Bruce D. Jacobs, Esq.
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

Norman Leventhal, Esq.
Raul Rodriguez, Esq.
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

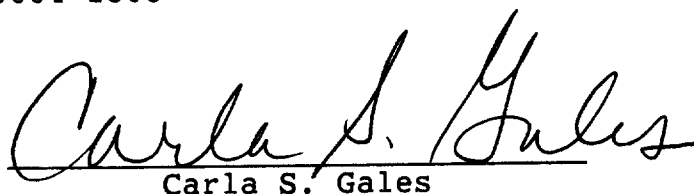
Robert A. Mazer, Esq.
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, N.W.
Suite 800
Washington, D.C. 20005

Philip L. Malet, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Veronica Haggart, Esq.
Vice President & Director
Regulatory Affairs
Motorola, Inc.
Suite 400
1350 I Street, N.W.
Washington, D.C. 20005

Leslie Taylor, Esq.
Leslie Taylor Associates
6800 Carlynn Court
Bethesda, MD 20817-4302

Linda Smith, Esq.
Robert M. Halperin, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505


Carla S. Gales